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	1023-268US01
RE:	APPLICATION SERIAL NUMBER:
Response to Restriction Requirement	10/698,050

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CENTRAL FAX CENTERNOV 30 2005 PATENTIN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Orhan Soykan; Sheila A. Grant; Darcy J. Lichlyter Confirmation No. 1185
Serial No.: 10/698,050
Filed: October 30, 2003 Customer No.: 28863
Examiner: Vivek Natarajan
Group Art Unit: 3735
Docket No.: 1023-268US01
Title: OPTICAL DETECTOR OF ORGANIC ANALYTE

CERTIFICATE UNDER 37 CFR 1.8 I hereby certify that this correspondence is being transmitted via facsimile to the United States Patent and Trademark Office on November 30, 2005.

By: Shirley A. Betlach

Name: Shirley A. Betlach

RESPONSE TO RESTRICTION REQUIREMENT

Commissioner for Patents
Alexandria, VA 22313-1450

Dear Sir:

This response is to the Office Action mailed October 31, 2005. Claims 1-37 have been restricted under 35 U.S.C. § 121 as follows:

- I. Claims 1-21 and 33-37, drawn to an optical detector of an organic analyte,
- II. Claims 22-32, drawn to an analyte measuring device utilizing fluorescent dyes.

Applicants hereby elect Group I with traverse.

General Traversal

Applicants hereby elect Group I with traverse. According to MPEP § 803, there are two criteria for a proper requirement for restriction between patentably distinct inventions: (A) The inventions must be independent (see MPEP § 802.01, § 806.04, § 808.01) or distinct as claimed (see MPEP § 806.05 - § 806.05(i)); and (B) there must be a serious burden on the Examiner if restriction is required (emphasis added).

In the Office Action, the Examiner asserted that Inventions I and II are related as combination and sub-combination. However, the Examiner failed to recognize that many of the elements of the independent and dependent claims are substantially similar. Although the independent claims of the Inventions differ greatly in scope, there is no serious burden on the Examiner with respect to examination of claims 1-37, and the restriction should be withdrawn.

For example, in order to restrict claims directed to the combination and the sub-combination, the Examiner is required to show both two-way distinctness and reasons for insisting on the restriction, i.e., separate classification, status, or field of search. MPEP 806.05(c). The Examiner has failed to establish two-way distinctness, and the Applicants submit that the two-way distinctness does not exist. In particular, the Examiner has failed to establish separate classification, status, or field of search.

Consequently, the restriction between Group I and Group II is improper and should be withdrawn.

Date:

30 November 2005
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